

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
MARCH 27, 2006**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 17, 2006 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:10 p.m. The following were present: Chair Hugh Holston, Ann Buffington, John Cross, Russ Parmele and Rick Pinto. Bill Ruska, Zoning Administrator, and Terry Wood, Esq., Deputy City Attorney, was also present.

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Parmele moved approval of the February 27, 2006 minutes as written, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Houston, Buffington, Cross, Parmele, Pinto. Nays: None.)

Mr. Ruska was sworn in for all testimony to be given at this meeting.

CHANGES IN AGENDA

Mr. Ruska said regarding BOA-06-11 2449 Battleground Avenue, staff had received a request to have this matter withdrawn. The landscaping that was at issue has been worked out through the site plan process and there is, therefore, no need for the variance.

Ms. Buffington moved the withdrawal of BOA-06-11, seconded by Mr. Parmele. The Board voted 6-0 in favor of the motion. (Aye: Holston, Buffington, Cross, Parmele, Pinto. Nays: None.)

Mr. Ruska said in regard to BOA-06-15, 1605 New Garden Road, the Board was in the same position as it was last month with only three members able to vote on that item.

Chair Holston said, as with last month, the Board has two members who had to recuse themselves from voting in this matter, leaving only three members to vote on it. Since at least four affirmative votes are needed to vote in this matter, this matter will have to be continued until next month's meeting.

Ms. Buffington moved continuance of BOA-06-15, 1605 New Garden Road, until the next monthly meeting, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Parmele, Pinto. Nays: None.)

Chair Holston said in BOA-06-13, 600 Elmwood Drive, Mr. Cross would have to recuse himself in this matter. The applicant preferred to continue the matter until next month.

Mr. Parmele moved that BOA-06-13, 600 Elmwood Drive, be continued until the next meeting of the Board, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Parmele, Pinto. Nays: None.)

Chair Holston said in BOA-06-18, 420 East Seneca Road, Mr. Cross has recused himself from voting. However, the applicant desired that the remaining four members hear the matter.

Chair Holston said in BOA-06-20, 833 North Elm Street, Ms. Buffington had asked to be recused from voting on this matter. However, the applicant desired that the remaining four members hear the matter.

OLD BUSINESS

VARIANCE

- (A) **BOA-06-11: 2449 BATTLEGROUND AVENUE OAKCREST CENTER, LLC REQUESTS A VARIANCE FROM THE MINIMUM LANDSCAPE REQUIREMENTS. VIOLATION: A RECENTLY CONSTRUCTED ADDITION REQUIRED THE INSTALLATION OF TWO PARKING LOT CANOPY TREES, WHICH THE APPLICANT IS PROPOSING NOT TO PLANT. THIS CASE WAS CONTINUED FROM THE FEBRUARY 27, 2006 MEETING. SECTIONS 30-5-4.7 & 30-5-4.8 PRESENT ZONING-RS-12, BS-11, CROSS STREET-SUNSET DRIVE. (WITHDRAWN)**

This item was withdrawn at the beginning of the meeting.

- (B) **BOA-06-13: 600 ELMWOOD DRIVE - JEFFREY AND LISA HILL REQUEST A VARIANCE FOR A PROPOSED KITCHEN ADDITION THAT ENCROACHES INTO THE MINIMUM BUILDING SEPARATION REQUIREMENT. VIOLATION: THE PROPOSED ADDITION WILL BE BUILT 0.9 FEET FROM THE EXISTING DETACHED CARPORT INSTEAD OF 5 FEET AS REQUIRED. THIS CASE WAS CONTINUED FROM THE FEBRUARY 27, 2006 MEETING. (SECTION 30-4-8.2(B)(1), PRESENT ZONING RS-12, BS-53, CROSS STREET-ROCKFORD ROAD. (CONTINUED)**

This item was continued to next month's meeting.

INTERPRETATION

- (A) **BOA-06-15: 1605 NEW GARDEN ROAD - KRUSCH PROPERTIES, LLC REQUESTS AN INTERPRETATION OF A ZONING CONDITION WHICH PROHIBITS "FAST FOOD DRIVE THROUGHS." IT IS THEIR CONTENTION THAT COFFEE SHOPS WITH DRIVE THROUGH SERVICE ARE NOT INCLUDED IN THIS USE. THIS CASE WAS CONTINUED FROM THE FEBRUARY 27, 2006 MEETING. CONDITIONAL DISTRICT SHOPPING CENTER #2601, TABLE 30-4-5-1, CD-SC, 121, CROSS STREET-HORSEPEN CREEK ROAD. (CONTINUED)**

This matter was continued to next month's meeting.

APPEAL OF A NOTICE OF VIOLATION

- A) **BOA-06-16: 3600 BLOCK OF U.S. 220 NORTH - METROPOLITAN ADVERTISING & PROMOTIONS, LLC DBA MOBIL AD PRO APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF A PROHIBITED SIGN THAT IS DESIGNED TO BE TRANSPORTED BY VEHICULAR MEANS. THIS CASE WAS CONTINUED FROM THE FEBRUARY 27, 2006 MEETING. SECTIONS 30-2-2.11 AND 30-5-5.2.9797. (DENIED)**

Mr. Ruska stated that Metropolitan Advertising Promo, LLC (web based Mobile Ad Pro) is the owner of a vehicular advertising business. This business advertises for other businesses using portable signs and mobile billboards. This case was continued from the February 27, 2006 meeting. The signs are attached to all elevations of a truck and are driven around on public streets or can be parked on a client's property for on-site promotional events. Their advertisement states that the signage can be displayed as tri-action, which means the signage rotates and can change copy as it is being displayed.

The zoning office has determined the sign functions as a portable sign. On January 17, 2006, the applicant was issued a Notice of Violation for the use of the portable sign. On January 31, 2006, the applicant appealed the Notice of Violation.

Section 30-2-2.11 defines a *Portable sign* as: "Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to signs: designed to be transported by means of wheels; converted to A- or T-Frames; menu and sandwich board signs; gas or hot-air filled balloons; umbrellas used for advertising; signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operation of the business." Section 30-5-5.2 Prohibited signs states that: "Unless otherwise permitted under this Article, the following signs are prohibited in all zoning districts:" One of the types of prohibited signs is covered by subsection (C): "Portable signs, but not including signs which cannot be read from the public right-of-way and sandwich board signs as permitted in Section 30-5-5.17."

At their August 22, 2005 meeting, the Board heard an appeal, BOA Case #05-30 that was almost identical to this request. That appeal was denied.

Chair Holston opened the public hearing.

Michael Fox, Esq., 100 North Greene Street, Suite 600, was previously sworn or affirmed. He handed up notebooks for the Board's consideration. Mr. Fox represented Mobil Ad Pro in this matter. They do not believe that the activity in which Mobil Ad Pro engages in falls within the definition that the City feels is prohibited. The point of his presentation is to show the Board why not and to distinguish it from some other signs that are clearly prohibited. He will have questions for the City on its interpretation of the ordinance. Fundamentally, they feel that this ordinance is poorly drafted and is not as inclusive as the City Zoning staff likes to think that it is in this particular case. He then went through the notebooks provided the Commission and explained its contents. He disagreed with Mr. Ruska when he characterized the previous case this Board heard as virtually identical.

Justin Reeves, 3010 Brookmill Drive, Suite 208, Raleigh, NC, previously sworn or affirmed, said the \$1,000 per delivery was per month. These deliveries are typically in town.

Mr. Fox continued explaining the handout. He presented contracts from Greensboro firms and explained the services provided for each. He referred to the ordinance that contained the definition of "portable signs." He said there was nothing in the ordinance that fits Mobil Ad Pro and the ordinance does not address what Mobil Ad Pro does. He said from a public policy perspective they feel that the City should have the burden of clearly showing that this is within the prohibited activities. They do not feel the City could do that, given the definition. He said they would ask the Board to overturn the violation as presented by City staff.

Mr. Fox said it was his understanding that their standard contract includes delivery services. There are some customers that may make more use of the delivery services than the advertising. Mr. Reeves does business in Wilmington, Cary, Durham, Charlotte, Raleigh, Winston and High Point and none of those have any problem with this. The service is the same everywhere.

Mr. Pinto asked if they only advertise for people when you are doing deliveries or otherwise using your truck for their services?

Mr. Reeves said the advertising on the truck is not necessarily what is on the truck at that time. There is the possibility of 12 different ads on any given truck at any time.

Jeff McClintock, Zoning Enforcement Officer for the City of Greensboro, was previously sworn or affirmed. He said this Notice of Violation was sent as stated. The truck in question was seen moving on Battleground and Wendover Avenues by several different Zoning Enforcement Officers. It was his and his co-worker's opinion that the primary use of this vehicle was advertising. He was contacted by the owner who stated, as has been stated here, that they also carry items for companies with which they contract. He informed the owner that the Notice of Violation would stand and he could come here. The ordinance in 30-5-5.3, Signs exempt from regulation, paragraph "f: Signs affixed to vehicles and trailers used in the normal transport of goods or persons where the sign is incidental and accessory to the primary use of this vehicle or trailer." He believed with their advertising that the primary use of this vehicle is the advertising and not the cargo capacity.

Mr. Ruska said that section of the ordinance was not before the Board. That is a section of the ordinance that describes various signs that are exempt from regulation.

Mr. McClintock read 30-5-5.3(f) again for the benefit of all. He believed that this truck was primarily used as advertising and its sideline use is any cargo activities that they have.

Mr. Ruska said staff believed that one of the factors that lead to that conclusion is the fact that the normal Lay's truck or a beer truck would not have a changeable sign. This has changeable copy signs. In fact, they have this tri-action mechanism where they can rotate the signs. There was testimony that the truck contains as many as 12 different types of advertisement. Their Website specifically talks about mobile billboards, population and busy streets and intersections. That has nothing to do with delivery of goods. That has to do with the number of people who will see the advertising copy.

As to the advertisements on City buses, they contend that that is incidental to the delivery of people. Furthermore, it is a governmental sign and exempt from regulation.

Mr. Pinto asked if there were times when this truck is driving around without any cargo for the pure purpose of having the advertisements on the truck? Is there an agreement with the people served that this truck is going to be driving around 12-16 hours a day, regardless of whether you are in the delivery mode?

Mr. Reeves said they are on the road 10 hours a day, but there has not been a time of three or four days when they are not doing deliveries, they are still on the road for 10 hours a day. There are always things that they are doing everyday.

As cross-examination, Mr. Fox questioned Mr. McClintock, who represented the City, with certain questions, and he answered all of Mr. Fox's questions.

Mr. Fox asked Mr. McClintock if he saw any difference in the ordinance between a company or a vehicle having just one product advertised or multiple products? Is there any distinction in the ordinance that prohibits multiple products?

Mr. McClintock responded no. If the owner of the Lay's truck wanted to put three different signs on there, one for Lay's, one for Cheetos and one for Pepsi, it would depend on where the vehicle was and

how it was being used for a violation to be determined. If such truck were being for purposes other than advertising, in addition to advertising, there would be no problem with that.

Chair Holston closed the public hearing.

Ms. Buffington said her initial thought was that she did see a difference between this and the other case. One of the clinchers for her was when he asked if the ordinance distinguished between one sign and multiples of signs. He did, if she understood correctly, say that he does not advertise for people that he is not delivering for at that time.

Chair Holston asked Mr. Reeves to return to the podium.

Mr. Reeves said 100 percent of his customers who sign on for advertising also pay money under the same contract for delivery services.

There was a general discussion among Board members during which they expressed their thoughts as to whether the principal business of this company was advertising, where the delivery was incidental.

Counsel Wood said it would take four votes to overturn an interpretation and he would request that the Board make a motion to overturn so that we will get a clear vote. If there are at least two members on the Board that are inclined to vote to overturn the Administrator, then he would hope that that was the way the motion was made. It would take four votes to overturn that interpretation.

Counsel Wood said it would be the City's burden to convince the Board that the ordinance applied.

Mr. Parmele moved that in BOA-06-16 to overturn the Notice of Violation by the City, seconded by Ms. Buffington. The Board voted 3-2 in favor of the motion, thereby denying the request. (Ayes: Holston, Buffington, Parmele. Nays: Cross, Pinto.)

NEW BUSINESS

VARIANCE

(A) BOA-06-17: 24 FOREST LAKE CIRCLE - STEPHEN AND DEBRA PARKER REQUEST A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. VIOLATION: A PROPOSED ATTACHED GARAGE ADDITION TO A SINGLE FAMILY DWELLING WILL ENCROACH 5 FEET INTO A 15-FOOT SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RS-40, BS-159, CROSS STREET-EAST WOODLYN WAY. (DENIED)

Mr. Ruska said Stephen and Debra Parker are the owners of a parcel located at 24 Forest Lake Circle. The lot is located on the west side of Forest Lake Circle east of Sedgefield Lake on zoning map block sheet 159 and is zoned RS-40. The lot contains a single family dwelling with an attached carport. The applicant is proposing to add a garage/workshop to the side of the structure. The addition will encroach 10 feet into a 15-foot side setback requirement. The lot is rectangular shaped and contains approximately 30,436 square feet. The lot is nonconforming because it does not contain a minimum of 40,000 square feet. The existing house is centered on the lot. The applicant has shown a drawing that reflects existing entrances/exits into the side of the house, and established walkways with landscaping features that would remain intact. The proposed garage/workshop addition will contain approximately 470 square feet. The adjacent properties are also zoned RS-40.

Chair Holston opened the public hearing.

Steve Parker, 24 Forest Lake Circle, previously sworn or affirmed, said their dilemma is even though the house is a little bigger than their old house was, it is still a 1950s vintage so it has no closets and very little storage space. Compounding that is that it is a heavily wooded lot with mature trees, which are always dropping something on the cars. They are trying to continue to keep the carport for cars and then the little side garage and workshop would be to keep his woodworking equipment out of the garage area so they could actually put a car in the garage. He handed up a couple of photographs, which he explained. Basically, they would like to keep the same lines of the house by pushing the carport over another 10 feet and then snuggle in the workshop behind the carport in between where there is a couple of trees and a walkway coming from the deck. He said there was a sewer easement behind a tree so if they go farther back on that side, they hit the sewer easement. In the photo, he was standing on top of the sewer easement. There are mature trees on the other side of the house. He would like to keep the carport as is and simply extend it out and enclose it as a one-car garage. Then behind that he would have a workshop. This would encroach 10 feet into the 15-foot side setback. He knows of no one in the neighborhood who has a problem with this request.

There was no one present to speak in opposition to this request. Chair Holston closed the public hearing.

The Board then discussed the request.

Mr. Ruska said most of the homes in this area had been built at the time the City annexed it into the City. The City just put comparable City zoning on it. It is only when a detached building is located behind the house that you get the five feet. If the deck were greater than four feet, then it would count. If it is four feet or less, then it would not count because a deck four feet or less is allowed to encroach a certain percentage into a rear setback.

The Board continued discussing the request. There are unique circumstances such as the sewer easement, the slope of the property, the lake behind it and the trees.

Mr. Ruska explained that RS-40 was meant for septic systems and wells and we discourage having that kind of zoning within the City. It is just that the Sedgefield Lakes area when it came within the City, due to annexation of such a large area that was zoned RS-40, it still had a number of vacant parcels and if they had put their default RS-12 zoning on it, they would have created situations where people could shoehorn houses in between larger lots.

Chair Holston asked Mr. Parker to return to the podium for some clarification.

Mr. Parker said Mr. Ruska actually touched on it. He spent quite a bit of time with Loray Averett talking about RS-40 and she said that was one of the very few sections left in the City or area.

The Board continued with their discussion and deliberation.

Mr. Pinto said in BOA-06-17, 24 Forest Lake Circle, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and the variance denied. Mr. Cross seconded the motion. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Parmele, Pinto. Nays: None.)

(B) BOA-06-18: 420 EAST SENECA ROAD - JOHN BEARD FOR E.N. BEARD HARDWOOD LUMBER INC., REQUESTS A VARIANCE FROM THE MINIMUM STREET SETBACK REQUIREMENT. VIOLATION: A PROPOSED ATTACHED SHED ADDITION WILL ENCROACH 3.12 FEET INTO A 25-FOOT SETBACK FROM THURSTON ROAD. TABLE 30-4-6-4, PRESENT ZONING-HI, BS-68, CROSS STREET-THURSTON ROAD. (GRANTED)

Chair Holston said Mr. Cross had requested that he be recused from voting on this item due to a business conflict of interest.

Mr. Parmele moved that Mr. Cross be recused from discussing or voting on this item due to a conflict of interest, seconded by Mr. Pinto. The Commission voted 4-0-1 in favor of the motion. (Ayes: Holston, Buffington, Parmele, Pinto. Nays: None. Abstain: Cross.)

Mr. Ruska said John Beard is the owner of the property located at 420 East Seneca Road. The lot is located at the southeastern intersection of East Seneca Road and Thurston Road on zoning map block sheet 68 and is zoned HI. The applicant is requesting a variance to construct an attached partially enclosed shed to one of the existing buildings on the lot. The shed will encroach 3.12 feet into a 25-foot setback from Thurston Road. The property is used for a lumber business that includes planning and storage of various lumbers. The existing building adjacent to Thurston Road is slightly angled. The applicant is trying to keep the proposed shed in line with the existing building; thus causing a slight encroachment for the proposed shed. The property contains approximately six acres. Of the six acres, approximately 1.58 acres contain buildings/structures. Tax records indicate the majority of the structures were built from 1951 through 1958. The adjacent properties located to the east and south are also zoned HI and the properties located on the western side of Thurston Road are zoned LI.

Chair Holston opened the public hearing.

John Beard, 3301 Walton Drive, previously sworn in, passed up material for the Board's consideration. They are proposing to add on to the machinery that is inside the existing building. The diagram shows a lumber conveyor system and the lumber comes down the conveyor and we pull the lumber on both sides. They have designed the building to minimize the size so they have just enough space on either side. When they add on to increase the size of the lumber chain or conveyor, they need to be able to keep in line so they can pull the lumber on both sides because of the length of the lumber. That is why they cannot decrease the width of the building. They do not want to start fresh and tear down the building because it is very expensive to do so. They are trying to increase their production so hopefully they can stay in business for a long time. The road takes a bend there and the way the old building was set up, it was with the curve there. That is where it causes the problem with lining up a new building.

Kelly Kellum, KM Machine in Biscoe, NC, was previously sworn or affirmed. He pointed out the property line. This building is set skewed just a little. So if we extend this out, where the encroachment occurs is right here. He did not know how far back actually, but the 3.12 feet is maximized here on the corner on the tip. A majority of the new construction would encroach the 3.12 feet. They did not realize this until they went through the planning process and the 3.12-foot encroachment was discovered at that point. That is a function of lining up the new structure with the existing structure.

Mr. Kellum was asked if, from a contractor's standpoint, would it be difficult or overly costly to angle the wall a little bit? He understood that the conveyors need to be straight within the building and you need

to have a certain amount of room. But is it possible and not cost-prohibitive to angle the wall that is

along the road in such a manner that at the end of the building, it is 3 feet off? It did not seem that that angle would affect much of your usable space within the building?

Mr. Kellum said it would be difficult, not impossible. He thought when you refer to the machinery drawing where it says "new addition," they have got a conveyor coming out here with actually a byproduct of taking the material in. We have got to bring the sticks that the material comes in back out. So if you will look, that conveyor is very close to that sidewall. If they change that any, then they get into having to shift the entire machinery over to get it in there. That is why the corner would be where they are encroaching.

There was no one present to speak in opposition to the request. Chair Holston closed the public hearing.

The Board discussed the merits of the request.

Mr. Pinto said in BOA-06-18, 420 East Seneca Road, based on the stated finding of fact, he moved that the Zoning Enforcement Officer be overruled and that the variance be granted based upon the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance; if the applicant complies with the provisions of the ordinance, he cannot make a significant addition to the building and without a significant addition to the building, he is going to be unable to appropriately compete in the marketplace, according to uncontradicted testimony before the Board. The variance requested is because the addition is proposed to go straight back from an existing building. The existing building is skewed to some extent toward the property line and by extending the building it does not encroach across the setback but for the last 20 feet of the exception and at its greatest point, the corner of the building only encroaches 3.12 feet into the 25 foot setback from Thurston Road. The hardship of which the applicant complains results from those unique circumstances of the original building being skewed and the necessity of trying to run the existing extension straight back from the existing building. The hardship is not from the applicant's own actions. Marketplace necessitates expansion from time to time to keep up with business and competition. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and the granting of the variance assures public safety and welfare and does substantial justice. With regard to those two findings, he said that there has been no evidence put before this Board that there are any safety issues with regard to the expansion. There are no sight issues with regard to Thurston Road. This is a high industrial area and the addition proposed seems to be in conformity with the other property around. Ms. Buffington seconded the motion. The Board voted 4-0-1 in favor of the motion. (Ayes: Holston, Buffington, Parmele, Pinto. Nays: None. Abstain: Cross.)

(C) BOA-06-19: 1208 COUNTRY CLUB DRIVE - ALLEN AND MICHELLE SHARPE REQUEST A VARIANCE FROM A CENTERLINE STREET SETBACK REQUIREMENT. VIOLATION: A PROPOSED DETACHED GARAGE WILL ENCROACH INTO A CENTERLINE SIDE STREET SETBACK. THE PROPOSED GARAGE WILL ENCROACH 4 FEET INTO A 40-FOOT CENTERLINE SIDE SETBACK FROM HAMILTON ROAD. TABLE 30-4-6-1, PRESENT ZONING-RS-9, BS-27, CROSS STREET-HAMILTON ROAD. (GRANTED)

Mr. Ruska stated that Allen and Michelle Sharpe are the owners of a parcel located at 1208 Country Club Drive. The lot is located at the northeastern intersection of Country Club Drive and Hamilton Road on zoning map block sheet 27. The property is currently zoned RS-9.

The applicant is requesting a variance from a centerline side street setback requirement. A proposed

detached garage will encroach 4 feet into a 40-foot centerline setback from Hamilton Road. The garage will contain two stories. The ground level square footage will be approximately 780 square feet and the second story square footage approximately 396 square feet for a total of approximately 1,176 square feet.

Hamilton Road has a forty-foot right-of-way width. This is considered substandard. Typical local/collector streets have a minimum of 50 feet for right-of-way width. The narrow dedication does not allow the structure to meet the centerline setback. The required setback for the detached accessory building is 15 feet from the property line or 40 feet from the centerline, whichever is greater. The applicant can meet and exceed the property line setback. The building will be 16 feet from the property line; however, it will encroach 4 feet into the centerline requirement. In his application and on his drawing, the applicant has stated a wish to preserve a significant oak tree. By shifting the building a few feet towards Hamilton Road, the building footprint will be at least six feet from the tree's roots. The adjacent properties are also zoned RS-9. The property located on western side of Hamilton Road is also zoned RS-9 and contains Irving Park School.

Chair Holston opened the public hearing.

Allen Sharpe, 106 East Newlyn Street, previously sworn or affirmed, handed up a couple of letters for the Board's consideration. He said basically his wife and he purchased this property. It is an older existing home on Country Club, but there is basically a 50 foot setback off the front of Country Club that prohibits what may be their new home that they intend to build within the next couple of years as to how close they can push that to Country Club. They have looked at reducing the size of the garage to accommodate the setbacks for Hamilton Road. They have done that as best they can. They are looking to put a two-car garage there. He does have a boat, another vehicle that he would like to store in that along with other yard equipment and things of that nature, and with the unfinished storage on the second floor of that garage. If this were any other standard street, it would have a 50-foot right-of-way. Because this is an older neighborhood, it does have a substandard right-of-way. The tree in question is a 100-foot hardwood Ash tree. They would like to save that. There is a letter from Bridge Tree in detail regarding the critical root system that they would like to try to preserve. They feel that four feet off, making a total of 10 feet off of the critical root system would help preserve the likelihood of that tree surviving. They do not see it as a hardship to the neighborhood or any disadvantage to the neighborhood. Although this is a corner lot, if you are at the intersection of Country Club and Hamilton, there is no visual impact from the roadway for any drivers that may be making a right or left-hand turn. The building sets sufficiently back that it would not impede any view.

They were able to speak to both of their adjoining neighbors on the right-hand side as you face the house from Country Club, which would be 1206 and 1204 Country Club. They verbally gave Mr. and Mrs. Sharpe no opposition to it, saying they would like to see improvement to the area. The other closest neighbor would be Irving Park School and they really do not see a detriment on their side of the street.

They really looked for the best location architecturally for the garage. They tried to reduce the garage the best way they could for their needs for a two-car garage. The tree is a unique fixture to the neighborhood and consistent with the neighborhood.

In response to a question from Chair Holston, Mr. Parker said there was no garage there now. Their intent is probably within the next two years to remove the house and per conversations with the architect and City zoning, the current plan for the new home would meet codes. He is not exactly sure how far from the new proposed home to the detached garage, but this new plan would meet all current

regulations. The house that is drawn in the bold is the proposed house. The dotted line is the existing

house.

In response to a question from Mr. Pinto, Mr. Parker said their intent is to move next month or shortly thereafter. They have done extensive renovations to the existing home, but their goal is to move into a new home within a few years. He is not sure the neighbors would like to see a boat and two or three vehicles parked outside on a consistent basis. So he would like to have those covered. They plan to build the garage first so as to have storage for what he has today.

Mr. Cross said, as he understands it now, the existing house remains, but you are going ahead and build the garage now. Then he would come back in a couple of years to tear down and rebuild the existing house.

Mr. Parker said he was a developer and they have several projects that will not complete until approximately 24 months from now, which would allow him to afford to build a new home.

Chair Holston said facing the house from Country Club, why not move the garage closer to Country Club and over in front of the tree as opposed on that side of the tree?

Mr. Parker said, if he were not mistaken, based on what his architect and the City planning people have said is that the proximity to the garage to the new structure would not meet current or correct setbacks for an attached garage.

There was no one present who wished to speak in opposition to the request. Chair Holston closed the public hearing.

Mr. Cross said in the matter of BOA-06-19, 1208 Country Club Drive, he moved that the Zoning Administrator's findings of fact be incorporated into the record by reference and based on such findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance because if the applicant complies with the provisions of the ordinance, they will not be able to make any reasonable use of the property due to the fact that this is in a neighborhood where garages are fairly standard. The applicant has researched this very well, as far as the detached versus the attached garage option and it is perfectly reasonable to expect a garage of this nature on this lot size in the area, as indicated. Plus the hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the substandard right-of-way, in he is only proposing to encroach four feet, but which meets the alternative test of more than 15 feet from the property line and up to a possibly 100 foot tree causing the garage to be not ideally placed outside of the centerline setback. If we want to preserve a 100 foot tree and have the garage, you have to put it four feet in there if it is going to be the appropriate size for a lot and house of this nature. The hardship results from the application of the ordinance to this property because of the 40-foot centerline setback for the substandard right-of-way, which does not appear to be quite appropriate for this area and this particular use. The hardship is not the result of the applicant's own actions because obviously the circumstances of the property existed and they exist this way today. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because this has not presented any sight problems. It does not appear to be an undue burden of this property or the neighboring properties. The school across the street even makes this more so than a typical application of this nature. The granting of the variance assures the public safety and welfare and does substantial justice because it does not adversely affect public safety. It is

going to make the property more valuable and the neighborhood more attractive as a whole. Mr. Pinto

seconded the motion. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Parmele, Pinto. Nays: None.)

SPECIAL EXCEPTION

(A) BOA-06-20: 833 NORTH ELM STREET - MARY FABRIKANT REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-4-4.2(B)2) TO ALLOW A REDUCTION IN REQUIRED PARKING SPACES. THE ORDINANCE REQUIRES 8 OFF-STREET SPACES AND THE APPLICANT IS PROPOSING 3 OFF-STREET PARKING SPACES. THE HISTORIC PRESERVATION COMMISSION HAS RECOMMENDED THIS SPECIAL EXCEPTION. PRESENT ZONING-GO-M, BS-2, CROSS STREET-WEST HENDRIX STREET. (GRANTED WITH CONDITION)

Chair Holston said Ms. Buffington had requested recusal from voting on this item due to a conflict of business interest.

Mr. Parmele moved the recusal of Ms. Buffington to discuss or vote on this request due to a conflict of interest, seconded by Mr. Cross. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Cross, Parmele, Pinto. Nays: None.)

Mr. Ruska said Mary Fabrikant is the owner of the property located at 833 North Elm Street in the Fisher Park Historic District. The lot is located at the southwestern intersection of North Elm Street and West Hendrix Street on zoning map block sheet 2. The lot is currently zoned GO-M. The applicant is requesting a Special Exception as authorized by Section 30-4-4.2(B)3) to allow for a reduction in required off-street parking spaces. The required number of spaces for a proposed office use, based on one space per 300 square feet of gross floor area is eight (8) and the applicant can only provide three (3) spaces on site. The property previously functioned as a single family dwelling. The owner is proposing to change the use to office use, which requires additional off-street parking spaces.

At their February 22, 2006 meeting, the Historic Preservation Commission recommended the Special Exception for the reduction of 5 off-street parking spaces. The adjacent properties located to the west and south are also zoned GO-M, the property located on the east side of North Elm Street is also zoned GO-M.

Chair Holston opened the public hearing.

Carl Myatt, 213 North Park Drive, previously sworn or affirmed, referred to the site plan, of which he was the author. He said it was a challenge to convert a residence to an office space. In this case at 833 North Elm, there is another challenge because it is in a historic district so it has the historic guideline overlay on top of that. It is in the Fisher Park Historic District. The Junior League saw this as an opportunity to preserve a house, because the house had been on the market for a couple of years, and have a new office building. It has visibility, it is on a corner, it is close to downtown, it is surrounded by office buildings already and it is zoned appropriately at General Office - Moderate. They went to the Historic Commission for three requests: One was to remove the non-contributing structure in the rear of the property (that can be seen in the dash line where the parking lot is proposed); the second item was to remove a tree in the parking lot. The third one was to have a Special Exception granted from eight parking spaces to three parking spaces. The Historic Commission approved all three, but they were coming to the Board of Adjustment today for the 8 to 3 parking spaces. He understands that the Junior League has one full-time person and one part-time person. Danielle Helms is here today and

she can talk about that, should you want more information. She is the president-elect of the

organization. There is on street parking along this property along Hendrix Street. There is a marked area that has the signs up, "Parking from 9:00 to 6:00." There is also more parking into the neighborhood itself. This organization does not meet during the day. They have a Board of Directors' meeting that meets at night and over the weekend. So the parking next door at 823 could be used for their overflow at night or on the weekends. They have met with David Ortego with GDOT and after they explained certain modifications they would have to make, he sees it as workable. They do propose to use the nine foot existing drive off Hendrix coming into the property and that is to the furthest point away from North Elm Street. They are requesting the reduction from eight to three parking spaces. You will note a little space behind the handicap access parking and it has a car shown. Even though that does not qualify for a parking space, you can get a compact car in there. Bill Guill is also here and he is the realtor for the property.

Tiffany Franks, 809 Fairmont, was sworn or affirmed.

Danielle Helms, 306 West Cornwallis Drive, was sworn or affirmed.

Ms. Franks said their headquarters for Junior League are really used for the office manager, who is their full-time staff person, and then they have a bookkeeper, who is there approximately 12 hours a week. So those are the two people who are there at headquarters. Certainly they use the space for other comings and goings of their volunteers, but they come a few at a time, and they are just running in quickly to grab something and then leaving again. As Mr. Myatt stated, most of their meetings are held in the evenings.

It was explained that the handicap parking space did not count in the number of spaces. They have three parking spaces in addition to the handicap parking space.

In response to a question from Mr., Parmele, Ms. Franks said there was substantial parking on Hendrix Street on both sides of the street. They have driven by from time to time just to monitor the kind of parking happening there. Generally, not many people are parking along Hendrix Street. They have not talked with Craft Insurance about using their parking at night, but they certainly intend to.

As to meetings, they have a once a month membership meeting for their full membership that is not held at their headquarters. The other meetings they are talking about are small committee meetings that involve anywhere from three to 10 people at the most. Once a month they have a Board meeting and that involves 21 people. The meetings are all at night or on weekends. Their current office is at 220 State Street. This will not be for temporary residencing. They have been on State Street for 20-30 years. The organization has been around for 80 years. They intend to be at this location for years. This is a long-term investment in order for them to be able to give more resources back to the community. So they do foresee themselves here for a long, long time.

Mr. Cross said obviously there are some unique circumstances here since the Junior League only meets on nights and weekends. If we grant the Special Exception, are we opening it up to all businesses or can they condition it to the Junior League's business?

Mr. Ruska said the Board could condition it to their business.

Bill Guill, 6116 Lake Brandt Road, was sworn or affirmed and said he was the realtor for the property. The family who owns the house has had it in their family for three generations. They really wanted the house to be used for a purpose that would enhance, maintain and protect it. He had talked with David Craft and Mr. Craft is very amenable to working with them anyway he can.

There was no one to speak in opposition to the request. Chair Holston closed the public hearing.

Mr. Cross said in BOA-06-20, 833 North Elm Street, he moved that the Zoning Administrator's findings of fact be accepted and incorporated into the record by reference. He moved that the Zoning Enforcement Officer be overruled and the Special Exception granted with one condition: That the occupant of the property be the Junior League of Greensboro. He supported that based on the fact that due to the Junior League's activities and the nature of their business that is being approved in this particular Special Exception, the lesser standard of parking spaces will not create problems due to increased on street parking based on the fact that this increased on street parking is more than likely going to be on weekends and after hours and not during regular business periods, in addition to the fact that there seems to be adequate on street parking at the present time for the uses proposed and there are other parking alternatives with neighboring facilities that have been explored and are likely to come out favorably. As a result, this lesser standard will not create a threat to the public safety for the same reasons. The Special Exception will do substantial justice. Mr. Pinto seconded the motion. The Board voted 4-0-1 in favor of the motion. (Ayes: Holston, Cross, Parmele, Pinto. Nays: None. Abstain: Buffington.)

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There being no further business before the Board, the meeting was adjourned at 4:51 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/jd.ps